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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/942,810 10/02/97 WATTERSON

S 2727.1US

EXAMINER

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ART UNIT PAPER NUMBER

3764
DATE MAILED:

08/09/01

Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 24

Application Number: 08/942,810
Filing Date: 10/2/97
Appellant(s): Waterson et al

Jonathan Richards
For Appellant

EXAMINER'S ANSWER

This is in response to appellant's brief on appeal filed 7/11/00.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

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(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

4,664,646	Rorabaugh	5-1987
4,370,766	Teague, Jr.	2-1983
4,026,545	Schoeneberegger	5-1977
5,207,622	Wilkinson et al	5-1993

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(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 21-37 are rejected under 35 U.S.C. 103. This rejection is set forth in prior Office action, Paper No. 17.

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(11) Response to Argument

1. Rorabaugh does not disclose the need for a gas spring connected between the support structure and the tread base to assist in rotating the treadbase between the operating position and the storage position.

Given the well known need to assist a user in lifting of a bed, base or exercise device of any kind, including a Murphy bed, it is obvious, as discussed above, to use the assist described in the Teague patent, to aid in the lifting of the Rorabaugh tread base.

2. Rorabaugh makes no suggestion or motivation for combining the references in the manner suggested.

3. No reference in Teague, Jr. to any teaching suggestion or motivation to the need or desirability of applying the counterbalance mechanism disclosed therein to any other application or field of art.

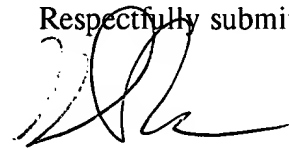
As to 2 and 3 above, it should be too well settled now to require citation or discussion that the test for combining references is not what the individual references themselves suggest but rather what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. Any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning, but so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made and does not include knowledge gleaned only from applicant's disclosure, such a reconstruction is proper. In re McLaughlin, 443 F.2d 1392, 1395, 170 USPQ 209, 212 (CCPA 1971).

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4. The appellant is correct in the assumption that Guilbault was added in an effort to show the combination of an lift assist with an exercise treadmill, which further adds to the obviousness of combining a Murphy bed assist, with a treadmill, as shown by the combination of Rorabaugh and Teague, Jr.

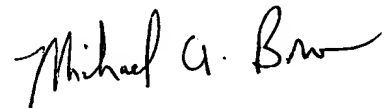
For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

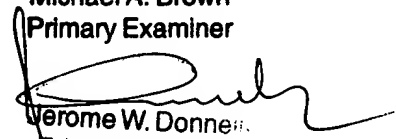


GLENNE E. RICHMOND
PRIMARY EXAMINER

gr
August 8, 2001



Michael A. Brown
Primary Examiner



Jerome W. Donne
Primary Examiner

Attachment for PTO-948 (Rev. 03/01, or earlier)
6/18/01

The below text replaces the pre-printed text under the heading, "Information on How to Effect Drawing Changes," on the back of the PTO-948 (Rev. 03/01, or earlier) form.

INFORMATION ON HOW TO EFFECT DRAWING CHANGES

1. Correction of Informalities -- 37 CFR 1.85

New corrected drawings must be filed with the changes incorporated therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the Notice of Allowability. Extensions of time may NOT be obtained under the provisions of 37 CFR 1.136(a) or (b) for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

2. Corrections other than Informalities Noted by Draftsperson on form PTO-948.

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made, other than correction of informalities, unless the examiner has approved the proposed changes.

Timing of Corrections

Applicant is required to submit the drawing corrections within the time period set in the attached Office communication. See 37 CFR 1.85(a).

Failure to take corrective action within the set period will result in **ABANDONMENT** of the application.